

Friedmann

EXHIBIT C

In The Matter Of:

In Re Sears

Holdings

Rob Riecker

June 19, 2019



Min-U-Script® with Word Index

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Chapter 11 - Case No. 18-23538 (RDD)

5 -----
6 In Re:
7 SEARS HOLDINGS CORPORATION, et al.,
8 Debtor.
9 -----

10
11
12 DEPOSITION OF ROB RIECKER

13
14 Wednesday, June 19, 2019

15 9:00 a.m.
16
17
18
19
20
21

22 Reported by:
23 Joan Ferrara, RMR, FCRR
24 Job No. 2019-72623
25

June 19, 2019

9:00 a.m.

New York, New York

Deposition of ROB RIECKER,
held at the offices of Weil Gotshal
& Manges, LLP, 767 Fifth Avenue,
New York, New York, before Joan Ferrara,
a Registered Merit Reporter, Federal
Certified Realtime Reporter and Notary
Public of the State of New York.

A P P E A R A N C E S:

Attorneys for Unsecured Creditors:

AKIN GUMP STRAUSS HAUER & FELD, LLP

One Bryant Park

Bank of America Tower

New York, New York 10036.

BY: JOHN P. KANE, ESQ.

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Debtors-in-Possession: Sears Holdings

Corporation, et al.:

WEIL GOTSHAL & MANGES, LLP

767 Fifth Avenue

New York, New York 10153

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JENNIFER CROZIER, ESQ.

(Continued)

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A P P E A R A N C E S: (Continued)

Attorneys for ESL Investments, Inc.:

CLEARY GOTTlieb STEEN & HAMILTON, LLP

One Liberty Plaza

New York, New York 10006

BY: ABENA A. MAINOO, ESQ.

amainoo@cgsh.com

ALSO PRESENT:

Stephen Szrom, Cleary Summer

Associate

Kimberly Mannausa, Weil Summer

Associate

Chris Good, M-III

Nick Weber, M-III

Brian Griffith, M-III

1

2 R O B R I E C K E R,

3 called as a witness, having been duly

4 sworn by a Notary Public, was examined

5 and testified as follows:

6 EXAMINATION BY

7 MR. FRIEDMANN:

8 Q. Good morning, Mr. Riecker.

9 A. Good morning.

10 Q. Now you've been deposed

11 previously in connection with Sears

12 bankruptcy proceedings, correct?

13 A. Yes.

14 Q. So I'll just remind you that
15 you've been sworn to tell the truth today,
16 and you understand that it's the same as if
17 you had been sworn to tell the truth in a
18 court.

19 Do you understand that?

20 A. Yes.

21 Q. There is a court reporter, of
22 course. So she'll be recording all of my
23 questions and all of your answers. We'll
24 just need to be careful to let each other
25 finish their respective questions or

1 R. Riecker

2 surety that we've paid property taxes in
3 every year that they've been on that
4 campus.

5 Q. Since you've been -- how long
6 have you been working with Sears, both its
7 prior -- you know, including its prior
8 iteration pre-bankruptcy?

9 A. 2005.

10 Q. Since 2005, to the best of your
11 knowledge, has Sears paid property taxes to
12 the Village of Hoffman Estates in
13 connection with the Hoffman Estates
14 Corporate Campus?

15 A. To my knowledge, yes.

16 Q. And those property taxes are paid
17 in arrears, correct?

18 A. I believe Illinois is arrears
19 state.

20 Q. Meaning that taxes levied for
21 2017 are paid at some point the following
22 year during 2018, correct?

23 A. That's my understanding.

24 Q. Okay.

25 And those taxes are paid to the

1 R. Riecker

2 Village of Hoffman Estates in March and
3 then there's a second payment in June of
4 the year, correct?

5 MS. MAINOO: Objection.

6 Compound.

7 BY MR. FRIEDMANN:

8 Q. You can answer.

9 A. Yes.

10 Q. Okay.

11 At the end of the year in which
12 the taxes are collected, there are property
13 tax rebates that are disbursed back to
14 Sears so long as Sears meets certain job
15 requirements under the EDA, correct?

16 MS. MAINOO: Objection.

17 A. The mechanics of the EDA
18 agreement, as far as holding a number of
19 positions, allows for some form of rebate
20 to come back. What that rebate is for, I
21 don't know the mechanics of how all of that
22 works.

23 Q. Okay.

24 And to the best of your
25 knowledge, at least until the Chapter 11

1 R. Riecker

2 terms of those accounts payable.

3 In the situation with Sears prior
4 to and in bankruptcy, to say that that
5 mechanic happened exactly that way every
6 time, it's impossible to say that.

7 Q. Okay.

8 When the company refers to its
9 merchandise accounts payable, in general is
10 that something different than when
11 referring to its ordered inventory? Are
12 those booked separately?

13 MS. MAINOO: Objection. Vague.

14 A. Ordered inventory is not booked
15 into the financial systems of the company,
16 to use your term. It's not accounted for
17 or recorded in the company's financial
18 statements that get issued.

19 Q. Because there's nothing to book
20 at that point, it's a plan to, at some
21 point in the future, receive title to
22 inventory that the company has not yet paid
23 for, correct?

24 MS. MAINOO: Objection.

25 A. That is correct.

1 R. Riecker

2 Q. And you wouldn't -- consistent
3 with that, Sears wouldn't enter an unpaid
4 invoice for undelivered goods in the
5 general ledger unless and until it has
6 taken title of those goods and actually
7 paid for those goods, correct?

8 MS. MAINOO: Objection.

9 A. That is generally correct.
10 However, we do receive goods for which we
11 have not received bills for, and we do
12 receive bills for which we have not
13 received goods.

14 To the extent that a bill is
15 received and entered into the accounting
16 system, it may be entered into the
17 accounting system in a miscellaneous
18 accounts payable account and then it has to
19 be matched with an invoice, PO, a three-way
20 matching process.

21 So to say that everything happens
22 simultaneously and it works perfectly, it
23 doesn't. It doesn't for us or any other
24 company.

25 Q. Okay.

1 R. Riecker

2 MS. MAINOO: When you say can you
3 accurately characterize it, you mean
4 just in terms of what it says about
5 who, who it's from and to?

6 MR. FRIEDMANN: Only what I've
7 said so far.

8 A. Yes.

9 MR. FRIEDMANN: No trick
10 questions for you or him.

11 MS. MAINOO: I just want to make
12 sure we're all clear.

13 MR. FRIEDMANN: I appreciate
14 that.

15 BY MR. FRIEDMANN:

16 Q. Mr. Riecker, is this one of the,
17 best of your knowledge, one of the daily
18 cash flow forecasts that we were discussing
19 just before that were sent to buyer on a
20 daily basis?

21 MS. MAINOO: Objection. Lack of
22 foundation.

23 A. It is sent every day that the
24 banks are open for commercial business.

25 Q. On every business day they're

1 R. Riecker

2 getting a copy of this, every bank day?

3 A. Every bank day.

4 Q. Non-bank holiday days and

5 non-weekend days.

6 A. Correct. It is not a daily.

7 Q. Understood.

8 Is this, however, one of those

9 daily cash forecasts?

10 A. Yes.

11 Q. And if you'll look at under where

12 it has -- first of all, who is Rajat

13 Prakash?

14 A. Rajat Prakash is the acting

15 treasurer of the company and works in the

16 Treasury area.

17 Q. And at the time between the

18 bankruptcy petition and the sale to

19 Transform, who did Mr. Prakash report to?

20 A. He reported to me.

21 Q. Okay.

22 And if you go back and look at

23 this e-mail which we've marked as Exhibit

24 3, under the key call-out section, the very

25 last bullet point, do you see that?

1 R. Riecker

2 A. Yes.

3 Q. Where it has the total AP balance
4 beginning January 31, 2019.

5 Do you see that?

6 A. Yes.

7 Q. And it has merchandise AP of
8 \$72.6 million.

9 Do you see that?

10 A. Yes.

11 Q. And non-merchandise AP of \$61.9
12 million.

13 Do you see that?

14 A. Yes.

15 Q. Okay.

16 And does this refresh your
17 recollection as to whether or not in these
18 daily cash forecasts the accounts payable
19 balance was broken out by both merchandise
20 accounts payable and non-merchandise
21 accounts payable?

22 MS. MAINOO: Objection.

23 A. What I'm trying to clarify,
24 Jared, is this is an e-mail. Attached to
25 this e-mail is a file. That is the file

1 R. Riecker

2 that is the daily cash forecast. This is
3 just a call-out of those numbers.

4 I see the call-out of AP here in
5 the e-mail. Whether that's on the actual
6 Excel file attached, I thought that was the
7 question you were asking me.

8 Q. Okay, sure.

9 A. That's why I was confused.

10 Q. Let me rephrase it in a way to
11 make it easier to answer.

12 On every day in which the daily
13 cash forecast was provided to the buyers,
14 to be all of the days in which banks are
15 open, was the company reporting to them a
16 breakout in the total accounts payable
17 balance of merchandise separate from
18 non-merchandise accounts payable?

19 MS. MAINOO: Objection.

20 A. Generally, yes.

21 Q. And those amounts would change on
22 a daily basis, correct?

23 MS. MAINOO: Objection.

24 A. Yes.

25 Q. Was one of the reasons that

1 R. Riecker

2 during the period between the petition and
3 the sale to Transform, correct?

4 MS. MAINOO: Objection. Vague.

5 A. Trying to split what was ordered,
6 what was CIA, what was just naturally
7 coming in, I don't -- the specifics of the
8 mechanics and how all of that was done, I'm
9 not -- I'm generally aware, but not aware
10 enough to answer the question with
11 specificity.

12 Q. To the extent the buyer assumed
13 ordered inventory, they would be assuming
14 both an obligation to take title to
15 inventory that was ordered and also to pay
16 for it, correct?

17 MS. MAINOO: Objection. Calls
18 for a legal conclusion.

19 A. How that is defined in the APA, I
20 don't know. It's not a definition that I
21 can opine upon.

22 Q. Mr. Riecker, prior to the
23 closing, Sears separately tracked available
24 cash and unavailable cash, correct?

25 MS. MAINOO: Objection. Vague.

1 R. Riecker

2 A. That is correct.

3 Q. Unavailable cash would include
4 cash in escrow, for example?

5 MS. MAINOO: Objection. Vague.

6 A. Yes.

7 Q. Unavailable cash would also
8 receive credit card receivables?

9 A. Specificity of that, I don't
10 know.

11 Q. Unavailable cash would include
12 cash that's posted as collateral?

13 MS. MAINOO:

14 A. Sometimes yes, sometimes no.

15 Q. Unavailable cash would include
16 invested cash?

17 A. I don't believe we had any
18 invested cash.

19 Q. Theoretically.

20 A. Theoretically, yes.

21 Q. Okay.

22 Unavailable cash would include
23 cash in regional banks?

24 A. The level of specificity here,
25 you're getting into a level of specificity

1 R. Riecker

2 Q. And if you look down, I think
3 it's the third e-mail down in the chain --
4 maybe it's the fourth -- it's an e-mail
5 dated November 2, 2018 at 8:33 p.m. from
6 Mr. Prakash where he begins, it says Kunal
7 comma.

8 Do you see that?

9 A. Yes.

10 Q. And below that, he says, "Please
11 see the specific components of unavailable
12 cash followed by some call-outs."

13 Do you see that?

14 A. I do.

15 Q. And is your understanding of this
16 e-mail that Mr. Prakash was providing Mr.
17 Kamalani with the specific components that
18 make up unavailable cash as unavailable
19 cash is tracked by Sears' accounting
20 system?

21 MS. MAINOO: Objection. Lack of
22 personal knowledge.

23 A. Unavailable cash is not tracked
24 by the accounting system. The accounting
25 system does not define unavailable cash.

1 R. Riecker

2 Q. So where is unavailable cash
3 tracked?

4 MS. MAINOO: Objection.

5 A. Unavailable cash was only tracked
6 on this.

7 Q. On this e-mail?

8 A. Based on their definition of what
9 they think is unavailable cash.

10 Q. Okay.

11 And when you say based on their
12 definition, you're referring to what
13 Mr. Prakash lists as unavailable cash,
14 correct?

15 A. That is correct.

16 Q. Okay.

17 And as you'll see Mr. Prakash
18 lists several components of unavailable
19 cash, including cash in escrow, credit card
20 receivables, cash posted as collateral,
21 invested cash, cash in regional banks and
22 cash in stores.

23 Do you see that?

24 A. Yes.

25 Q. And he totals that unavailable

1 R. Riecker

2 A. I believe those are two different
3 terms and have nothing to do with each
4 other.

5 Q. I'm looking at, just to be clear,
6 the -- on page 2 of Exhibit 3 where it says
7 available cash balance of zero?

8 A. Yes, it's also on the previous
9 page.

10 Q. Okay.

11 A. That has nothing to do with
12 unavailable cash and based on their
13 definitions.

14 Q. It's separate from unavailable
15 cash, correct?

16 MS. MAINOO: Objection.

17 A. It is not unavailable cash.

18 Q. Double negative there, so I want
19 to make clear we're saying the same thing.

20 Where Exhibit 3 is reporting an
21 available cash balance of zero, that cash
22 balance is not including unavailable cash
23 in any of those categories we just
24 discussed, correct?

25 MS. MAINOO: Objection.

1 R. Riecker

2 A. That's correct.

3 Q. Okay.

4 Do you have an understanding of
5 the extent to which available cash that was
6 in concentration accounts in the period
7 between the execution of the APA and the
8 closing was swept in order to be applied to
9 outstanding DIP indebtedness?

10 MS. MAINOO: Objection. Vague.

11 A. Could you reask the question,
12 please?

13 MR. FRIEDMANN: Could you read
14 the question back?

15 (Whereupon, the requested portion
16 was read back by the Court Reporter.)

17 MS. MAINOO: Same objection.

18 MR. FRIEDMANN: It's the same
19 question.

20 A. Define "concentration account,"
21 please.

22 Q. I'm referring to the debtors'
23 concentration accounts.

24 MS. MAINOO: Objection.

25 A. It's still -- there's hundreds of

1 R. Riecker

2 accounts.

3 Q. Again --

4 A. What's a concentration versus
5 not, I don't -- without seeing it, the
6 delineation of which specific account, I
7 can't define that.

8 Q. Okay.

9 Again, this is not meant to be as
10 confusing as the question apparently has
11 become.

12 Are you aware of the extent to
13 which available cash of the debtors was
14 swept on a daily basis and applied towards
15 outstanding DIP indebtedness?

16 MS. MAINOO: Objection.

17 A. Available cash balances are
18 applied to the DIP balance the next day to
19 reduce the DIP balance.

20 Q. And was that done on a daily
21 basis, where daily again means whenever the
22 banks are open?

23 MS. MAINOO: Objection.

24 BY MR. FRIEDMANN:

25 Q. This is between, by the way, the

1 R. Riecker

2 signing of the APA and the closing.

3 A. If the available cash sat in an
4 account that was automatically swept by the
5 bank, it would go to pay down the revolver,
6 yes, or the DIP balance, excuse me.

7 Q. And do you know whether that
8 daily sweep of the available cash balances
9 occurred on the night before the closing to
10 pay down the outstanding DIP indebtedness?

11 MS. MAINOO: Objection.

12 A. Sweeps typically occur before 1
13 p.m. Eastern Time. So the night of, I
14 don't -- I would say no, at the night there
15 was no sweep.

16 Q. Okay.

17 Change that up a little bit for
18 you.

19 Do you know whether the daily
20 sweep of the available cash balances
21 occurred on the day immediately prior to
22 the closing to pay down the outstanding DIP
23 indebtedness?

24 A. Most likely. They're automatic
25 sweeps.

1 R. Riecker

2 Q. And that would mean that at 12:01
3 a.m. on the day of the closing, the
4 debtors' accounts would have a zero
5 balance, because if they were swept the
6 prior day and applied to the DIP
7 indebtedness, there would be nothing in
8 that account until new monies were
9 deposited in that account during the course
10 of the following day, correct?

11 MS. MAINOO: Objection. Lack of
12 personal knowledge.

13 A. Not necessarily.

14 Q. To the best of your knowledge,
15 was every available dollar as of the
16 closing that the debtor had, every
17 available -- sorry, strike that.

18 To the best of your knowledge,
19 was every available dollar that the debtors
20 had at the closing used to pay down the
21 outstanding DIP indebtedness?

22 MS. MAINOO: Objection.

23 A. Based upon the automatic sweeps
24 that happened, based on the rules for
25 giving DIP financing, yes.

1 R. Riecker

2 and answered.

3 A. I do not.

4 Q. Okay.

5 Mr. Riecker, as the CFO of the
6 debtor -- and again, it's the period
7 between the bankruptcy petition and the
8 closing of the sale to the buyer -- you
9 were familiar that debtors had certain
10 obligations under the Asset Purchase
11 Agreement to provide certain target amounts
12 of inventory and receivables to the buyer
13 at closing, correct?

14 MS. MAINOO: Objection.

15 A. Yes.

16 Q. And you were also aware of
17 debtors' obligations under the Asset
18 Purchase Agreement to pay the DIP credit
19 agreement down to \$850 million, correct?

20 A. Yes.

21 Q. And during the period between the
22 effective date of the Asset Purchase
23 Agreement and the closing, from your
24 standpoint as the CFO of the debtors, would
25 you agree that the debtors reasonably

1 R. Riecker

2 managed the amount of inventory in

3 consultation with the buyer in order to

4 satisfy those conditions in the Asset

5 Purchase Agreement?

6 MS. MAINOO: Objection. Calls

7 for a legal conclusion.

8 A. Define "reasonable," please.

9 Q. From your perspective as the CFO
10 of the debtor at the time, in a manner that
11 allowed the debtor to satisfy the target
12 amounts that were required to be delivered
13 of inventory at the closing and allowed the
14 company to continue as a going concern.

15 MS. MAINOO: Objection. Calls
16 for a legal conclusion.

17 A. Yes.

18 Q. The decisions that were made,
19 whether -- set aside reasonable or not
20 even -- they were done in full view of the
21 buyer from your perspective, is that fair?

22 MS. MAINOO: Objection.

23 A. I don't know what the buyer saw
24 or did not see.

25 Q. Let's talk about it. We talked

1 R. Riecker

2 already they were getting those daily cash
3 flow forecasts, correct?

4 A. Yes.

5 Q. And they were also getting
6 borrowing base forecasts on a daily basis,
7 correct?

8 A. Yes.

9 Q. And the borrowing base forecasts
10 were updated on a daily basis with the
11 company's inventory management team,
12 correct?

13 A. Yes.

14 Q. Okay.

15 In that same period between the
16 effective date and the -- the effective
17 date of the Asset Purchase Agreement and
18 the closing of the sale to the buyer, would
19 you agree from your perspective as the CFO
20 of the debtors at the time, that the
21 debtors managed the accounts payable in
22 accordance with the cash management
23 policies and practices of Sears that had
24 been in effect prior to the petition date?

25 MS. MAINOO: Objection.

1 R. Riecker

2 Was cash flow managed during that
3 period between the effective date of the
4 Asset Purchase Agreement and the closing of
5 the sale with Transform in accordance with
6 the cash management policies and practices
7 that were in effect before the petition
8 date?

9 MS. MAINOO: Objection.

10 A. When you say "cash management
11 policies," you mean some written policy of
12 the company or practices?

13 Q. Either.

14 A. Prior to and during bankruptcy,
15 the company did manage its outflow based on
16 inflows.

17 Q. If we didn't get more granular,
18 we'll get more granular here instead. It
19 will be easier.

20 In the pre-petition period, Sears
21 routine delayed contractually due payments
22 by as many as 14 business days after the
23 actual due date for that payment, correct?

24 MS. MAINOO: Objection. Vague.

25 A. The company had historically

1 R. Riecker

2 delayed payments to vendors. Just prior to
3 bankruptcy, the days grew to 14 days, but
4 it had not been at that level during a
5 considerable time period prior to
6 bankruptcy.

7 Q. Okay. And again, I don't want to
8 be caught up on memory with exact time
9 periods. We'll use a couple of documents
10 that I don't think will take too long.

11 MR. FRIEDMANN: Can I have
12 Exhibit O, please, and we'll end up
13 going through R for the next couple of
14 minutes.

15 Exhibit 5, please.

16 (Exhibit 5, E-mail, marked for
17 identification, as of this date.)

18 BY MR. FRIEDMANN:

19 Q. Mr. Riecker, you're now being
20 handed what we've just marked as Exhibit 5,
21 and I apologize for the very small font.
22 I'm not sure why it printed out that way.

23 This is an August 6, 2018 e-mail
24 from Mr. Prakash to a number of recipients,
25 including yourself and Mr. Lampert at ESL

1 R. Riecker

2 and Mr. Kunal and the folks at M-III, et
3 cetera.

4 Do you see that?

5 A. Yes.

6 Q. And August 6, 2018 is before the
7 bankruptcy petition, correct?

8 A. Yes.

9 Q. About, give or take, two months
10 before the bankruptcy petition?

11 A. Yes.

12 Q. Okay.

13 And if you go down to the second
14 bullet under, "Key Assumptions."

15 Do you see that?

16 A. Yes.

17 Q. It says, "For most vendors,
18 domestic and import payments have been
19 shifted to an eight-day delay."

20 Do you see that?

21 A. Yes.

22 Q. And is that consistent with your
23 recollection what you were discussing
24 before about delaying payments past their
25 payment date for a period shorter than 14

1 R. Riecker

2 days, but at least past their payment date?

3 MS. MAINOO: Objection.

4 A. Yes.

5 Q. Okay.

6 And when it says an eight-day
7 delay, do you recall if that was eight
8 business days versus eight calendar days?

9 A. I do not.

10 Q. Okay.

11 So it could have been either,
12 you're just not sure now?

13 A. No.

14 Q. Okay.

15 MR. FRIEDMANN: Tab P.

16 (Exhibit 6, E-mail, marked for
17 identification, as of this date.)

18 BY MR. FRIEDMANN:

19 Q. Mr. Riecker, we're handing you
20 what's just been marked as Exhibit 6. This
21 is an e-mail from Friday, August 10, 2018,
22 so four days later than Exhibit 5.

23 Again, it's an e-mail from
24 Mr. Prakash. This one does not appear to
25 be sent to you, but as -- but, first of

1 R. Riecker

2 all, did I get that part right?

3 A. Yes.

4 Q. Okay.

5 And this one, Mr. Prakash reports
6 just confirming we are moving to a 10
7 business day delay for all non-exception
8 vendors.

9 Do you see that?

10 A. Yes.

11 Q. And is that consistent with your
12 recollection that, as you started getting
13 closer to the bankruptcy petition, the
14 amount of time posted due date was
15 increasing in terms of when payments were
16 being made?

17 MS. MAINOO: Objection.

18 A. Yes.

19 Q. Okay.

20 MR. FRIEDMANN: Q, please.

21 (Exhibit 7, E-mail, marked for
22 identification, as of this date.)

23 BY MR. FRIEDMANN:

24 Q. Mr. Riecker, we've just marked

25 Exhibit 7. This is a September 25, 2018

1 R. Riecker

2 e-mail again from Mr. Prakash. This one
3 does include you as one of the recipients.

4 Do you see that?

5 A. Yes.

6 Q. Okay.

7 Here we're still in the
8 pre-petition period, but a little bit less
9 than a month from the bankruptcy petition,
10 correct?

11 A. Yes.

12 Q. Okay.

13 And here Mr. Prakash reports to
14 thank you and others, "All, we are moving
15 to 14 business day delay for payments to
16 non-exception merchandise and
17 non-merchandise vendors."

18 Do you see that?

19 A. Yes.

20 Q. And he's saying, "Anything that
21 would have been paid tomorrow within 11
22 business day delay should now be paid on
23 Monday for a 14 business day delay."

24 Do you see that?

25 A. Yes.

1 R. Riecker

2 Q. And is that consistent with what
3 you were testifying to before, was that as
4 you got closer to the bankruptcy petition,
5 that's when this 14 business day delay in
6 payments was implemented?

7 MS. MAINOO: Objection.

8 A. Yes.

9 Q. Okay.

10 MR. FRIEDMANN: R, please.

11 (Exhibit 8, E-mail, marked for
12 identification, as of this date.)

13 BY MR. FRIEDMANN:

14 Q. Mr. Riecker, I've now just handed
15 you what we've marked as Exhibit 8.

16 Once again, this is an e-mail
17 from Mr. Prakash. This e-mail is also from
18 September 25, 2018. This e-mail, however,
19 also went to Mr. Lampert at ESL and
20 Mr. Kunal at ESL.

21 A. Mr. Kamlani.

22 Q. I'm sorry, what did I say --
23 Mr. Kamlani at ESL, excuse me.

24 And here, Mr. Prakash is
25 reporting in the third bullet point under

1 R. Riecker
2 gotten through the close?

3 MS. MAINOO: Objection.

4 A. I do not know.

5 Q. Okay.

6 MR. FRIEDMANN: We've been going
7 for about an hour and a half,
8 although, Rob, I know that you could
9 probably go straight through. I'm
10 going to take a short break, figure --
11 I want to be able to go through and
12 figure out if I can just wrap up in
13 the next one, so if you can give us
14 about 10 minutes.

15 MS. MAINOO: Sure.

16 MR. FRIEDMANN: And then I think
17 we'll be able to finish up in not much
18 more time.

19 (Recess taken 10:34 a.m. from
20 10:55 a.m.)

21 BY MR. FRIEDMANN:

22 Q. Mr. Riecker, when did you become
23 the CFO of Sears? This is in the
24 pre-petition period.

25 A. April of 2017.

1 R. Riecker

2 Q. And in your time as CFO of Sears
3 prior to the filing of the bankruptcy
4 petition, how commonplace was it to delay
5 vendor payments?

6 MS. MAINOO: Objection.

7 A. We delayed vendor payments during
8 that timeframe.

9 Q. Do you recall about --

10 A. During that timeframe.

11 Q. During the entirety of that
12 timeframe?

13 A. Off and on, yes.

14 Q. I know you said earlier,
15 testified earlier that the 14 business day
16 delay was something that happened closer to
17 the bankruptcy proceeding, but in a period
18 going back early 2018, at that point it was
19 the case that sometimes vendor payments
20 would be late as much as four, five or six
21 days, correct?

22 MS. MAINOO: Objection.

23 A. In early 2018?

24 Q. Yeah.

25 A. Without going back and seeing

1 R. Riecker
2 specified -- you can put that down -- I
3 want to talk about the specified
4 receivables that were to be provided under
5 the Asset Purchase Agreement.

6 During the negotiation of the
7 target amount of specified receivables that
8 were to be provided by the debtors to the
9 buyer at the close, the debtors agreed to
10 assign the buyer an aggregate of
11 \$25,200,000 of book value specified
12 receivables which comprise certain
13 categories of receivables as they were kept
14 in Sears' accounting system, correct?

15 MS. MAINOO: Objection.

16 A. That is my understanding.

17 Q. Okay.

18 And these were all of the other
19 accounts receivable that the debtors had
20 apart from those that were conveyed as part
21 of the borrowing base, correct?

22 A. I can't verify whether it was
23 all.

24 Q. These were not handpicked
25 accounts receivable where some would go to

1 R. Riecker
2 prepare in connection with the negotiation
3 of the Asset Purchase Agreement?

4 MS. MAINOO: Objection.

5 A. Define what you mean by help
6 prepare?

7 Q. That you oversaw or assisted in
8 some manner.

9 MS. MAINOO: Objection.

10 A. This was a schedule that was
11 prepared by individuals in our accounting
12 department and I believe provided to M-III.

13 Q. Okay.

14 So it was prepared by individuals
15 in the accounting department that you
16 supervise and then it was provided to
17 M-III, is that correct?

18 MS. MAINOO: Objection.

19 A. I don't have direct supervision
20 of those individuals.

21 Q. At some level.

22 MS. MAINOO: Objection.

23 BY MR. FRIEDMANN:

24 Q. When Schedule, what's now called

25 1.1K, but when the schedule of specified

1 R. Riecker

2 receivables was first prepared, did you
3 understand it to represent the then current
4 estimate much values of certain categories
5 of receivables as they're kept in the
6 ordinary course in accordance with Sears'
7 accepted accounting practices?

8 MS. MAINOO: Objection.

9 A. Yes.

10 Q. And this schedule was provided to
11 the buyer in advance of even the auction
12 that took place here at Weil Gotshal in mid
13 January, correct?

14 MS. MAINOO: Objection.

15 A. This specific schedule?

16 Q. It was not at that point labeled
17 1.1K, but a schedule of the specified
18 receivables, yes.

19 MS. MAINOO: Objection.

20 A. Do you have that schedule?

21 Q. Yeah.

22 (Exhibit 13, Presentation, marked
23 for identification, as of this date.)

24 BY MR. FRIEDMANN:

25 Q. Mr. Riecker, I've just handed you

1 R. Riecker

2 schedule of their view of the

3 recoverability of the gross amount of the

4 receivable.

5 Q. So, for example, something that
6 has a zero percent under that column, does
7 that indicate that in the discussions
8 between M-III and the folks in the
9 accounting department who prepared the
10 schedule, they concluded that there was a
11 zero percent chance of recovering on those?

12 A. Yes.

13 Q. And likewise, the ledger accounts
14 where they list 50 percent, does that
15 indicate that as between M-III and the
16 folks in Sears' accounting department who
17 prepared this schedule, they thought there
18 was likely a 50 percent chance of being
19 able to recover the total gross book value
20 amount?

21 MS. MAINOO: Objection.

22 A. Yes.

23 Q. Okay.

24 And to be clear, those are

25 basically educated guesses based on

1 R. Riecker

2 MS. MAINOO: Objection. Lack of
3 personal knowledge.

4 MR. FRIEDMANN: Can I finish the
5 question?

6 MS. MAINOO: You paused again.

7 MR. FRIEDMANN: I'm trying to be
8 careful of my wording so you don't
9 object based on form.

10 BY MR. FRIEDMANN:

11 Q. Do you recall if the --
12 strike that.

13 Do you recall if the buyer
14 diligenced these specific ledger accounts
15 in advance of executing the APA?

16 MS. MAINOO: Objection.

17 A. I do recall a meeting between the
18 debtor, its advisors, a potential buyer and
19 their advisors in which there was a level
20 of detail provided regarding many of these
21 individual ledger account names.

22 Q. And that was to understand both
23 what's actually in those accounts, correct,
24 as part of that?

25 MS. MAINOO: Objection.

1 R. Riecker

2 A. Yes.

3 Q. As well as to understand the
4 basis for why we believe the estimated
5 recovery value to be higher or lower,
6 correct?

7 MS. MAINOO: Objection.

8 A. I believe it was both, but it was
9 more about what the definitional accounts
10 were.

11 (Exhibit 14, E-mail chain, marked
12 for identification, as of this date.)

13 BY MR. FRIEDMANN:

14 Q. Mr. Riecker, we've just handed
15 you what's been marked as Deposition
16 Exhibit 14.

17 The top e-mail there is an e-mail
18 from -- I'll have you pronounce his last
19 name?

20 A. Butz.

21 Q. Say it again?

22 A. Butz.

23 Q. Butz.

24 To a number of recipients,
25 including yourself, as well as folks at

1 R. Riecker

2 Moelis, the advisor to the buyer. It's
3 dated January 7, 2019.

4 Do you see that?

5 A. Yes.

6 Q. And can you please tell me what
7 Mr. Butz's position was, or at the time on
8 January 7, 2019, more correctly?

9 A. He is, I believe, a senior
10 director over the, what I'll term as the
11 back office accounting functions of the
12 company.

13 Q. And do you know if he was one of
14 the individuals who played some role in the
15 creation of the list of specified
16 receivables that we were just looking at in
17 Exhibit 13?

18 A. Yes.

19 Q. Okay.

20 And if you go down to the very
21 beginning of this e-mail chain, which is at
22 the bottom of the second page, it appears
23 to start with what looks like a calendar
24 invite for a conference call.

25 Do you see that?

1 R. Riecker

2 A. Yes.

3 Q. And this is a conference call
4 that Mr. Butz is on and you're listed there
5 as well, as well as Mr. Kamlani and others
6 from Moelis and M-III and Lazard.

7 Do you see that?

8 A. Yes.

9 Q. And the subject of this is,
10 "Receivable Schedule."

11 Do you see that?

12 A. Uh-huh.

13 Q. Do you recall there being
14 conference calls with these individuals to
15 discuss this receivable schedule in early
16 January in advance of the auction?

17 A. Yes.

18 Q. Okay.

19 And the e-mails that follow,
20 without spending too much time going into
21 detail, but take as long as you need to
22 review them, appear to be a series of
23 e-mails between Mr. Butz and Mr. Kamlani
24 clarifying and providing detail with
25 respect to certain line items.

1 R. Riecker

2 Do you see that?

3 A. Yes.

4 Q. So would it be fair to say that
5 the buyer had an opportunity to diligence
6 this list of specified receivables provided
7 by the debtor in advance of the auction?

8 MS. MAINOO: Objection.

9 A. To what they diligenced or did
10 not diligence, did they have an opportunity
11 to look at information, yes.

12 Q. Okay.

13 Going back to the -- and we can
14 use the example, I'll use the example of
15 1.1K, which was a single document -- that
16 was Exhibit 12, I think.

17 A. Yes.

18 Q. These individual accounts, is it
19 fair to say that you would expect them to
20 fluctuate on a daily basis as receivables
21 are satisfied and new receivables are
22 generated?

23 MS. MAINOO: Objection.

24 A. Yes.

25 Q. So there couldn't be any

1 R. Riecker

2 be subject over the course of a month to
3 fluctuate based on, as I said before,
4 receivables that are satisfied and new
5 receivables that are generated, correct?

6 MS. MAINOO: Objection.

7 A. Yes.

8 Q. As you understood it as the CFO
9 of the debtors, during that period of time
10 between the execution of the APA and the
11 close, what the debtors were expected to
12 provide at closing, based on this schedule,
13 was the total amount of receivables of at
14 least \$255.2 million in book value at
15 close, not any individual line item hitting
16 a certain number, correct?

17 MS. MAINOO: Objection. Calls
18 for a legal conclusion.

19 BY MR. FRIEDMANN:

20 Q. You can answer.

21 A. Yes.

22 MR. FRIEDMANN: Tab W.

23 (Exhibit 15, E-mail, marked for
24 identification, as of this date.)

25 BY MR. FRIEDMANN:

1 R. Riecker

2 how to calculate each of these specific
3 categories of receivables?

4 A. Yes.

5 Q. Okay.

6 And that accounting methodology
7 that Sears was using both to calculate this
8 list of specified receivables but also more
9 generally, that was a methodology that
10 Sears used when it prepared, for example,
11 its financial statements?

12 A. Yes.

13 Q. And those were financial
14 statements that were audited by the
15 accounting firm of Deloitte?

16 A. Annual audited financial
17 statements. Not every financial statement
18 we prepared was audited.

19 Q. Okay.

20 But these were the -- it was
21 using that same methodology when it
22 prepared its annual audited financial
23 statements, correct?

24 A. Yes.

25 Q. Okay.

1 R. Riecker

2 Q. Okay.

3 If you know, when the buyer
4 calculated the value of the specified
5 receivables that it received from the
6 debtors at closing, it used a different
7 accounting practice than what Sears had
8 been and its team had been using to prepare
9 these, the schedule in the first place,
10 correct?

11 MS. MAINOO: Objection.

12 A. I don't know.

13 Q. You don't know?

14 A. I do not know.

15 Q. Okay.

16 To what extent does seasonality
17 affect the amount of inventory that Sears
18 will have on hand at any given time?

19 MS. MAINOO: Objection.

20 A. Seasonality is a factor related
21 to balances for many things in the company
22 related to inventory.

23 Q. And so there are seasons in which
24 you would expect inventory to be higher and
25 seasons in which it would be lower?

1 R. Riecker

2 we'll be able to wrap up. I need to
3 check with the team.

4 MS. MAINOO: Okay.

5 MR. FRIEDMANN: Thanks, Rob.

6 (Recess taken from 11:39 a.m. to
7 11:47 a.m.)

8 BY MR. FRIEDMANN:

9 Q. Mr. Riecker, we talked earlier
10 about the extent to which you consulted
11 with M-III during the period of time that
12 M-III was the financial advisor to Sears,
13 the company.

14 My question is, is to what extent
15 now post-sale to Transform you interact or
16 consult with Ernst & Young in the analyses
17 that they're doing?

18 MS. MAINOO: Objection.

19 A. I do not interact with Ernst &
20 Young regarding the work that they're
21 currently performing for Transform.

22 Q. And so do they --

23 A. And to the extent there is
24 interaction, it's directed at the direction
25 of counsel.

1 R. Riecker

2 Q. So to be clear, when they're
3 doing certain analyses, they're not running
4 them by you to, you know, check them to
5 make sure they make sense or consistent
6 with the way the company generally or
7 the -- strike that.

8 So to be clear, Ernst & Young is
9 not coming to you to make sure that
10 whatever analyses they're doing is
11 consistent with the way in which the
12 company, the company's accounting practices
13 work, for example?

14 MS. MAINOO: Objection.
15 Mr. Riecker testified to that. To the
16 extent he's consulting with Ernst &
17 Young, it's at the direction of
18 counsel. So, Jared, I understand your
19 question is with respect to any
20 non-privileged discussions, any
21 discussions not at the direction of
22 counsel?

23 BY MR. FRIEDMANN:

24 Q. To be clear, yeah, certainly to
25 the extent it's, you know, some kind of --

1 R. Riecker

2 well, let me strike that.

3 Yes, I'm just asking about

4 non-privilege issues.

5 A. Yeah, so I have not seen any of

6 their work product. I may get an

7 occasional question about who can I go to

8 see to find this or that. That's generally

9 the interaction with Ernst & Young.

10 MR. FRIEDMANN: Thank you,

11 Mr. Riecker. It's a pleasure to see

12 you. Thank you very much for coming

13 in and thank you.

14 MS. MAINOO: Thanks. I just have

15 one question.

16 EXAMINATION BY

17 MS. MAINOO:

18 Q. Jared asked earlier,

19 Mr. Friedmann asked earlier about your

20 knowledge of any role Mr. Jeff Butz played

21 with respect to the specified receivables.

22 To your knowledge, what role, if

23 any, did Mr. Butz play with respect to the

24 specified receivables schedule?

25 A. I think just in general of

1 R. Riecker
2 working with the accounting individual that
3 works in that area for those balance sheet
4 accounts, meaning accounts receivable.

5 MS. MAINOO: All right. No
6 further questions from me.

7 MR. FRIEDMANN: Okay.

8 MS. MAINOO: Just for the record,
9 I want to note that we'll need to get
10 the witness an opportunity to review
11 the transcript.

12 MR. FRIEDMANN: Of course.

13 MS. MAINOO: And I also see that
14 you agree to treat the transcript as
15 confidential?

16 MR. FRIEDMANN: Once you've had a
17 chance to review it, if you can let us
18 know what about it is confidential we
19 can agree to keep those portions
20 confidential.

21 MS. MAINOO: Okay. Thank you.

22 (Continued on next page to
23 include signature and jurat.)
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R. Riecker

MR. FRIEDMANN: Thank you. We
can go off the record.

(Time noted: 11:51 a.m.)

ROB RIECKER

Subscribed and sworn to before me
this ____ day of _____, 2019.

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

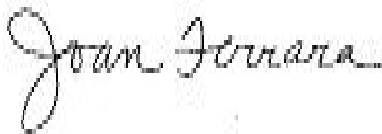
COUNTY OF NEW YORK)

I, Joan Ferrara, a Notary Public
within and for the State of New York,
do hereby certify:

That ROB RIECKER, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 19th day of
June, 2019.



Joan Ferrara

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2

----- I N D E X -----

3

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ROB RIECKER	MR. FRIEDMANN	5
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----- EXHIBITS -----

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Exhibit 2	Email chain	23
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DEPOSITION ERRATA SHEET

Case Caption: In Re: SEARS HOLDINGS
CORPORATION, et al.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of my
Deposition taken in the captioned matter or
the same has been read to me, and the same is
true and accurate, save and except for
changes and/or corrections, if any, as
indicated by me on the DEPOSITION ERRATA
SHEET hereof, with the understanding that I
offer these changes as if still under oath.

ROB RIECKER

Subscribed and sworn to on the _____ day of
_____, 2019, before me,

Notary Public, in and for the State of
